



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO

**GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT**

Prishtina, 5 December 2016
Ref. No.: RK1012/16

RESOLUTION ON INADMISSIBILITY

in

Case no. KI133/15

Applicant

Granit Berisha

**Constitutional review of Judgment ARJ. UZVP. No. 25/2015, of the
Supreme Court of the Republic of Kosovo, of 30 September 2015**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Arta Rama-Hajrizi, President
Ivan Čukalović, Deputy-President
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Bekim Sejdiu, Judge
Selvete Gërxhaliu-Krasniqi, Judge
Gresa Caka-Nimani, Judge.

Applicant

1. The Referral is submitted by Mr. Granit Berisha (hereinafter: the Applicant), a resident of Prishtina.

Challenged decision

2. The Applicant challenges Judgment ARJ-UZVP, no. 25/2015, of the Supreme Court, of 30 September 2015, which upheld the judgments of the lower instance courts, in conjunction with the decision of the Independent Oversight Board of the Civil Service of the Republic of Kosovo (hereinafter: the IOBCSK).
3. The Judgment of the Supreme Court was served on the Applicant on 15 October 2015.

Subject matter

4. The subject matter is the constitutional review of Judgment ARJ-UZVP no. 25/2015, of the Supreme Court, which allegedly violated the right to a fair trial, guaranteed by Article 31 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution), and the right to a fair trial, guaranteed by Article 6 of the European Convention on Human Rights (hereinafter: the ECHR).

Legal basis

5. The Referral is based on Article 113.7 of the Constitution and Article 47 of Law No. 03/L-121 on Constitutional Court of the Republic of Kosovo (hereinafter: the Law).

Proceedings before the Constitutional Court

6. On 5 November 2015, the Applicant submitted the Referral to the Constitutional Court of the Republic of Kosovo (hereinafter: the Court).
7. On 8 December 2015, the President of the Court appointed Judge Bekim Sejdiu as Judge Rapporteur and the Review Panel, composed of Judges: Robert Carolan (Presiding), Almiro Rodrigues (member) and Ivan Čukalović (member).
8. On 16 December 2015, the Court informed the Applicant about the registration of the Referral and sent a copy of the Referral to the Supreme Court.
9. On 29 September 2016, the President of the Court appointed Judge Altay Suroy as Judge Rapporteur replacing Judge Robert Carolan who resigned from the position of a Judge of the Constitutional Court on 9 September 2016.
10. On 20 October 2016, the Review Panel considered the report of the Judge Rapporteur and recommended to the Court to declare the Referral inadmissible as manifestly ill founded.

Summary of facts

11. By Decision No. 01/990 of the Minister of Trade and Industry, of 15 October 2012, the Applicant was suspended with payment of salary from work for

professional incompetence and bad management, until a decision of the Disciplinary Commission.

12. On 5 June 2013, the Disciplinary Commission (within the Government) issued Decision no. 02/2013 on transfer of the Applicant from the previous management position to a position with lower responsibility, but without losing the functional grade.
13. In accordance with Article 78 of the Law on Civil Service, the Applicant filed an appeal with the IOBCSK.
14. On 16 September 2013, the IOBCSK (Decision A 02/266/2013) upheld the decision of the Disciplinary Commission, stating that the Commission based its decision on the appraisal of the supervisor of the Applicant, in accordance with the provisions of Law no. L-149 on Civil Service of Kosovo, namely Article 33 paragraph 2 (3) and Article 34 paragraphs 2 and 4.
15. On an unspecified date, the Applicant filed a statement of claim with the Basic Court in Prishtina against IOBCSK's decision, requesting the annulment of the IOBCSK decision as unlawful.
16. On 13 January 2015, the Basic Court in Prishtina rejected as ungrounded the Applicant's statement of claim. This court found that *"the IOBCSK rendered the right decision and in compliance with the provisions of the Law on the Civil Service of Kosovo (Law No. 04/L-139), Article 67, paragraph 1, subparagraph 1.2, items 1, 2 and 3, and Article 51, paragraph 2, and Regulation No. 02/2011, on the Rules and Procedure of Appeal before the IOBCSK. The Court also found that in the present case, the provisions of Regulation No. 06/2012 – on Senior Management Positions in the Civil Service of Kosovo, Article 10, paragraph 4, item 4.1, Article 9, paragraph 3.4 and Article 19 have been applied correctly."*
17. On an unspecified date, the Applicant filed an appeal against the Judgment of the Basic Court in Prishtina with the Court of Appeal.
18. On 24 March 2015, the Court of Appeal rejected the appeal of the Applicant as ungrounded and upheld the Judgment of the Basic Court in Prishtina.
19. On an unspecified date, the Applicant filed a request for extraordinary review with the Supreme Court against the Judgment of the Court of Appeal.
20. On 30 September 2015, the Supreme Court (Judgment ARJ-UZVP no.25/2015), upheld the Judgment of the Court of Appeal.
21. In the reasoning of its Judgment, the Supreme Court stated among the other:

"Pursuant to Article 33 of Law No. 03/L-149, on the IOBCSK, it was determined that each institution of the public administration shall periodically at the end of each year, conduct a performance appraisal of Civil Servants. The performance appraisal is conducted for the purpose of enhancing work performance and insuring the gradual improvement of

the professional capacity and quality of administrative services. Supervisor is obliged to do performance appraisal results. Article 34, paragraphs 2 and 3 provide that the results of the performance appraisal shall be used to provide the necessary data to the Appellant to enable him to improve his performance (work) and the results of performance appraisals shall also be taken into account during the disciplinary procedures. Article 51, paragraph 2 of the same law also provides that civil servants have a duty to support and facilitate the policies adopted by the public administration. Given this factual situation, by Decision no.01/990, of the Minister of Trade and Industry, of 15.10.2012, the claimant was suspended from work, with payment 50% of the salary, due to professional incompetence and maladministration. The Disciplinary Commission, by Decision KD 02/2013, of 05.06.2013, transferred the Claimant to a position with lower management responsibilities, but without losing the functional degree, whereas by Decision no. 02/266/2013, of the IOBCSK, of 16.09.2013, the appeal of the Claimant, filed against the Decision of the Disciplinary Commission, has been rejected as ungrounded.”

Applicant's allegations

22. The Applicant alleges that the right to a fair trial was violated in his case, because the Supreme Court did not reason its decision and did not make any comments regarding the content (substance) of the statement of claim.
23. According to the Applicant “... None of the decisions of the domestic courts handled in substance the fact if the legal provisions mentioned in his appeals and requests have been respected in order for him to be dismissed from the position he had and to be transferred to a lower position with same salary... consequently, it cannot be concluded that the case of the Applicant has been reasoned and handled in legal terms as well as in material terms.”
24. The Applicant further alleges that “... in the proceedings conducted before the authorities of the Ministry and the Independent Oversight Board, the provisions of Law (No. 03/L-149) on the Civil Service and Regulation No. 06/2012 have been violated, whereas the provisions of the Law on Administrative Conflicts have been violated by the Court in the procedure for the review of legality of the contested decision.”
25. The Applicant also alleges that “...the conclusions of the Court represent discrimination in the implementation of the law in the case of the Applicant. Also the conclusion of the Court on rejection of the statement of claim of the Applicant in the administrative conflict is another discrimination in the implementation of the law.”

Admissibility of the Referral

26. The Court first examines whether the Applicant has met the admissibility requirements laid down in the Constitution, and as further specified in the Law and the Rules of Procedure.

27. In this respect, the Court refers to Article 113.7 of the Constitution, which establishes:

"Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law."

28. The Court also refers to Article 48 of the Law, which stipulates that:

"In his/her referral, the claimant should accurately clarify what rights and freedoms he/she claims to have been violated and what concrete act of public authority is subject to challenge."

29. In addition, Rule 36 (1) (d) of the Rules of Procedure, foresees:

"(1) The Court may consider a referral if:

[...]

(d) the referral is prima facie justified or not manifestly ill-founded."

30. In addition, Rule 36 (2) (b) of the Rules of Procedure specifies:

"(2) The Court shall declare a referral as being manifestly ill-founded when it is satisfied that:

(...)

(b) the presented facts do not in any way justify the allegation of a violation of the constitutional rights."

31. The Court notes that the Applicant alleges violations of the right to a fair trial, because the Supreme Court did not reason its decision and did not make any comments regarding the claims raised in the statement of claim.

32. As regards the right to a fair trial, the Court refers to Article 31 of the Constitution, which provides:

"1. Everyone shall be guaranteed equal protection of rights in the proceedings before courts, other state authorities and holders of public powers.

2. Everyone is entitled to a fair and impartial public hearing as to the determination of one's rights and obligations (...)."

33. In addition, Article 6 of ECHR [Right to a fair trial], establishes:

"In the determination of his civil rights (...), everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal."

34. The Court notes that the Supreme Court in its Judgment, deciding on the extraordinary request filed by the Applicant, found among the other: *"The allegations of the claimant regarding the violations are also ungrounded because it considered them without impact on determination of any factual situation different from the one determined by the second instance court, as the challenged judgment is clear and understandable, it contains sufficient reasons and decisive facts for taking legal decisions. This court also considers that the law has not been violated to the detriment of the claimant and the substantive law has been applied correctly."*
35. In this regard, the Court considers that the Applicant's allegations, for violation of the right to a fair trial, have not been convincingly substantiated. Those allegations are mainly related to the way of finding and assessment of the facts and of the application of the material law. The Court notes that the Supreme Court addressed all the Applicant's complaints raised before it, by providing a reasoned response to each of them.
36. The Court emphasizes that the mere reference of the provisions of the Constitution, and the allegations that they have been violated without any convincing arguments and without clarifying the circumstances that led to such a violation, allegedly committed by the public authority or the courts, does not provide sufficient basis to satisfy the Court that there has been a violation of human rights guaranteed by the Constitution and the ECHR.
37. Accordingly, the Court considers that the Applicant's allegation that the proceeding conducted before the Supreme Court was unfair and violates the right to a fair trial, namely the right to a reasoned decision, is ungrounded.
38. The Court further notes that the Applicant alleges that the authorities of the Ministry of Trade and of the IOBCSK, violated the provisions of the Law on Civil Servants No. 03/L-149, and the provisions of Regulation No. 06/2012, and that the regular courts unlawfully applied the provisions of the Law No. 03/L-202 on Administrative Conflicts.
39. In this regard, the Court reiterates that such an allegation raises the issue of legality, which falls under the jurisdiction of the regular courts.
40. The Court further reiterates that it is not its task under the Constitution to act as a court of fourth instance, in respect of the decisions taken by the regular courts. The role of the regular courts is to interpret and apply the pertinent rules of both procedural and substantive law (See Case *Garcia Ruiz vs. Spain*, No. 30544/96, ECHR, Judgment of 21 January 1999; see also case KI70/11 the Applicants *Faik Hima, Magbule Hima and Bestar Hima*, Resolution on Inadmissibility of 16 December 2011).
41. It is under the jurisdiction of the Court to ascertain, in general, whether the proceedings before the regular courts, viewed in their entirety have been fair (see, *inter alia*, case *Edwards v. United Kingdom*, App. No. 13071/87, Report of the European Commission of Human Rights, adopted on 10 July 1991).

42. The mere fact that the Applicant is dissatisfied with the outcome of the proceedings, cannot of itself raise a successful and admissible referral, claiming a breach of his/her rights guaranteed by the Constitution and the ECHR.
43. In these circumstances, the Court considers that the Applicant has not substantiated his allegations of a violation of fundamental human rights and freedoms guaranteed by the Constitution, because the facts presented by him do not indicate in any way that the Supreme Court denied him the right guaranteed by the Constitution, namely his right to a fair trial guaranteed by Article 31 of the Constitution and Article 6 of the ECHR.
44. Therefore, the Referral on constitutional basis is manifestly ill-founded and is to be declared inadmissible, in accordance with Rule 36 (1) (d) and 36 (2) (b) of the Rules of Procedure.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.7 of the Constitution, Articles 20, and 48 of the Law and Rule 36 (1) (d), 36 (2) (b) and 56 (2) of the Rules of Procedure, on 5 December 2016, unanimously

DECIDES

- I. TO DECLARE the Referral inadmissible;
- II. TO NOTIFY this Decision to the Parties;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20.4 of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur


Bekim Sejdiu



President of the Constitutional Court


Arta Rama-Hajrizi